

Message Text

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SUBJECT: BERLIN EXCERPTS FROM FRG CONSTITUTIONAL COURT
DECISION

REF: BONN 11169

1. THE FOLLOWING TRANSLATED EXCERPTS FROM THE DECISION
OF THE FEDERAL CONSTITUTIONAL COURT OF THE FRG ANNOUNCED
JULY 31 ARE ALL THOSE PARTS THAT, ACCORDING TO THE FRG
FONOFF, REFER TO BERLIN. THE EMBASSY EXPECTS TO RECEIVE
COPIES OF THE ENTIRE OPINION FOR STUDY IN THE NEAR FUTURE
AND WILL POUCH SEVERAL TO THE DEPARTMENT.

A. QUOTE AT THE PRESENT TIME THE FEDERAL REPUBLIC
INCLUDES THE LAENDER NAMED IN ARTICLE 23 OF THE BASIC
LAW, INCLUDING BERLIN; THE STATUS OF LAND BERLIN OF THE
FRG IS DECREASED AND ENCUMBERED ONLY BY THE SO-CALLED
RESERVATION(S) OF THE GOVERNORS OF THE WESTERN POWERS.
END QUOTE.

B. QUOTE THE (BASIC) TREATY CHANGES NO ASPECT OF
THE LEGAL STATUS OF BERLIN, AS IT HAS BEEN JOINTLY
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DEFENDED (VERTEIDIGT) AT ALL TIMES BY THE BUNDESTAG,

BUNDESRAT AND FEDERAL GOVERNMENT, THE LAENDER OF THE FEDERAL REPUBLIC AND THE FEDERAL CONSTITUTIONAL COURT IN RELIANCE ON THE BASIC LAW. THE BASIC LAW BINDS ALSO FOR THE FUTURE ALL CONSTITUTIONAL ORGANS OF THE FEDERATION AND THE LAENDER TO GIVE THIS LEGAL POSITION EFFECT WITHOUT LIMITATIONS AND TO STAND UP FOR IT. THE DECLARATIONS OF BOTH STATES MAY BE INTERPRETED AND UNDERSTOOD WITH RESPECT TO BERLIN (WEST) ONLY IN THIS CONTEXT.

THIS MEANS FURTHER THAT THE AGREEMENT IN PARAGRAPH 1 OF THE DECLARATION (PURSUANT TO WHICH THE EXTENSION TO BERLIN (WEST) OF TREATIES AND ARRANGEMENTS PROVIDED FOR IN ARTICLE 7 OF THE SUPPLEMENTARY PROTOCOL, IN ACCORDANCE WITH THE QA OF SEPTEMBER 3, 1971, CAN (UNDERLINED) BE AGREED IN RESPECTIVE CASES) IN NO CIRCUMSTANCES LIMITS THE CONSTITUTIONAL DUTY OF THE ORGANS ACTING FOR THE FRG TO INSIST ON THE EXTENSION TO BERLIN OF EVERY (UNDERLINED) AGREEMENT AND EVERY (UNDERLINED) UNDERSTANDING WITH THE GDR WHICH, BY REASON OF ITS CONTENT, CAN BE EXTENDED TO LAND BERLIN, AND TO CONCLUDE IT ONLY IF THE LEGAL POSITION OF BERLIN AND ITS CITIZENS IS NOT REDUCED AS OPPOSED TO THE LEGAL POSITION OF THE TERRITORY TO WHICH THE BASIC LAW APPLIES, BEARING IN MIND THE ALLIED RESERVED RIGHTS APPLICABLE TO BERLIN AND 'IN ACCORDANCE WITH THE QA OF SEPTEMBER 3, 1971'.

THE SAME GOES FOR THE AGREEMENT IN PARAGRAPH 2, ACCORDING TO WHICH THE PERMANENT MISSION OF THE FRG IN THE GDR WILL REPRESENT THE 'INTERESTS' OF BERLIN (WEST).

FINALLY, IT SHOULD BE NOTED THAT THE POSSIBILITY SET OUT IN PARAGRAPH 3 OF 'AGREEMENTS BETWEEN THE GDR AND THE SENAT' DOES NOT FREE LAND BERLIN FROM COMPLIANCE WITH THE CONSTITUTIONAL ORDER. END QUOTE.

2. FROM NEWSPAPERS THE EMBASSY NOTES THE FOLLOWING INTERESTING PARAGRAPH OF THE OPINION WHICH WAS NOT SUPPLIED BY THE FONOFF:

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QUOTE FINALLY IT MUST BE CLEAR THAT THE CURRENT PRACTICE AT THE BORDER BETWEEN THE FRG AND THE GDR, I.E. WALL, BARBED WIRE, DEATH STRIP AND SHOOTING ORDERS, IS PLAINLY INCOMPATIBLE (SCHLECHTHIN UNVEREINBAR) WITH THE TREATY. IN THIS RESPECT, THE TREATY PROVIDES A SUPPLEMENTARY LEGAL BASIS FOR EFFORTS BY THE FRG TO DO EVERYTHING POSSIBLE IN VIEW OF ITS CONSTITUTIONAL DUTY

TO CHANGE AND DISMANTLE THESE INHUMAN CONDITIONS. END
QUOTE.
HILLENBRAND

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